(1) Supreme Court, U.S.
FILED

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No. 00-

IN THE

Supreme Court of the United States

ROBERT BOGUE,

Petitioner,

v.

COMMONWEALTH OF PENNSYLVANIA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPERIOR COURT OF PENNSYLVANIA

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Was your Petitioner deprived of his federal constitutional rights to due process of law and a speedy trial in view of the willful failure of Florida to comply with the applicable provisions of the Interstate Agreement and Detainers Act?

II. Do the provisions of the Interstate Agreement on Detainers Act apply to a detainer arising from the Petitioner's open sentencing matter in the state of Florida?

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OPINIONS BELOW

Annexed hereto as Appendix A is a copy of the Judgment and Memorandum Opinion of the Pennsylvania Superior Court dated December 21, 1999, affirming the lower court. Annexed hereto as Appendix B is a copy of the Opinion of the Court of Common Pleas of Montgomery County dated April 26, 1996, denying the Petition for a Writ of Habeas Corpus. Finally, annexed hereto as Appendix C is a copy of the Order of June 26, 2000 in which the Supreme Court of Pennsylvania denied the Petition for Allowance of Appeal.

STATEMENT OF JURISDICTION

The Petitioner is asking this Court to review federal questions decided by the appellate courts of the Commonwealth of Pennsylvania. On June 26, 2000, the Supreme Court of Pennsylvania denied the Petitioner's Petition for Allowance of Appeal seeking review of a decision of the Superior Court of Pennsylvania dated December 21, 1999.

Therefore, this Petitioner is being timely filed within ninety days as permitted by Rule 13(3) and this Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS

This case involves the Extradition Clause found in Article IV, Clause 2 of the United States Constitution. This Clause provides that a person charged in any state with treason, felony or other crime, who shall flee from justice,

and be found in another state, shall on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

This provision is implemented by the Uniform Criminal Extradition Act and the Interstate Agreement on Detainers Act, 42 Pa. C.S. § 9101.

STATEMENT OF THE CASE

Your Petitioner is Robert Bogue, who was arrested in Martin County, Florida on March 1, 1981 and charged with Trafficking in Cocaine in violation of Florida Statute § 893.135(1)(b) and engaging in a criminal offense while in a possession of a weapon, in violation of Florida Statute § 790.07.

The Petitioner pled guilty to these offenses on September 23, 1981. He failed to appear as required for sentencing on December 22, 1982.

On June 27, 1989, the Petitioner was arrested in Pennsylvania and charged with Possession With Attempt To Deliver Marijuana. On June 30, 1989, the Petitioner was also charged with being a fugitive from the state of Florida based upon his having failed to appear for sentencing in December of 1982.

On July 7, 1989, the District Attorney's Office of Montgomery County, Pennsylvania, advised the Martin County, Florida, State Attorney's Office to begin extradition proceedings against the Petitioner. However, the state of Florida failed to comply with that request.

On January 14, 1991, your Petitioner was sentenced in the Court of Common Pleas of Montgomery County on the marijuana distribution charge to a term of not less than 5 1/2 nor more than 11 years imprisonment.

The Petitioner was also awaiting sentencing on a federal case arising in Arizona, *United States v. Robert Bogue, et al.* In May of 1994, that Court sentenced the Petitioner to a term of 4 years in custody, said sentence to run concurrent with the aforementioned Pennsylvania state sentence.

On September 26, 1994, your Petitioner requested final disposition by the state of Florida pursuant to the Interstate Agreement on Detainers Act, Florida Statute § 941.45. In that regard, the Petitioner submitted a formal written notice and request for final disposition, as did his Florida counsel. Accordingly and in response thereto, the Pennsylvania Department of Corrections sent the appropriate documents consistent with that request to the Office of the State Attorney as well as to the Circuit Court of Martin County Florida.

The Petitioner's request for prompt disposition of the outstanding Florida charges under the Interstate Agreement On Detainers Act was partly motivated by his desire to seek a concurrent sentence, as he had obtained from the federal authorities in Arizona, based upon his extensive and substantial cooperation with a federal drug investigation. Notwithstanding this cooperation, Petitioner's Florida counsel was advised by the Assistant State Attorney for Martin County Florida that the State of Florida was not going to take any action or make any effort to transfer your Petitioner to Florida for sentencing until after the Petitioner had completed serving all of his sentences. Thus, the State

of Florida made no attempt to comply with Petitioner's repeated request for a transfer back to Florida so that he might find closure as to those criminal charges.

On April 9, 1996, your Petitioner moved to dismiss the detainer, for the failure to provide him with a speedy trial and due process of law, in the Circuit Court of the Nineteenth Judicial Circuit in and for Martin County, Florida. By Order dated May 5, 1996, that Court denied Petitioner's Motion To Dismiss without a hearing primarily because the Court took the position that the detainer lodged against the Petitioner by the State of Florida did not put him within the class of protected individuals under the Act since the detainer was not based upon "any untried indictment, information or complaint"; Florida Statute § 9401.45.

After the denial of a motion for reconsideration, the Petitioner filed a Petition for a Writ of Prohibition to the Fourth District Court of Appeals in Florida, petitioning that appellate court to prohibit the state trial judge from proceeding further in the case and requesting Petitioner's discharge.

On August 28, 1997, the Fourth District Court of Appeals filed an Opinion dismissing his Petition. *See Bogue v. Fennely*, 505 So. 2d 575 (1997). Unfortunately, there was no jurisdiction at this time to invoke the discretionary review of the Supreme Court of Florida.

On May 27, 1998, the Petitioner's Florida counsel filed a Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 with the United States District Court for the Southern District of Florida, as per case number 98-14143. That Petition is still pending before a United States Magistrate Judge in that Court.

On June 16, 1998, the Petitioner was arrested as he was being released from custody in Pennsylvania from the service of the aforementioned sentence imposed by the Court of Common Pleas of Montgomery County. The Petitioner was thereupon charged once again with being a fugitive from justice from Florida, as officials from Martin County, Florida, had filed a criminal complaint against him under 42 Pa. C.S. § 9121, being the Uniform Criminal Extradition Act.

On June 30, 1998, the Petitioner's Pennsylvania counsel filed an application for a Writ of Habeas Corpus with the Court of Common Pleas of Montgomery County as per Docket No. 3578-98. An evidentiary hearing was held before the lower court on November 30, 1998. By Memorand "A" attached hereto, that Court ordered that the Petitioner's request for relief was denied and that he was to be extradited to the State of Florida. However, that Court also granted a subsequent application submitted on behalf of the Petitioner seeking a stay of the extradition Order pending the outcome of an appeal.

On May 6, 1999, a Notice of Appeal was duly filed to the Superior Court of Pennsylvania as per No. 1375 EDA 1999. On December 21, 1999, a Panel of the Superior Court of Pennsylvania filed a Judgment and Memorandum Opinion affirming the Order of the Court of Common Pleas of Montgomery County ordering your Petitioner's extradition to Florida. A true and correct copy of same is attached hereto as Exhibit "B".

On January 19, 2000, the Petitioner filed a Petition for Allowance of Appeal with the Supreme Court of Pennsylvania seeking discretionary review of the ruling of the Superior Court. However, by Order dated June 26, 2000, a true and correct copy which is annexed hereto as Exhibit "C", that Court declined to accept review of this case.

REASONS FOR GRANTING THE WRIT

PETITIONER'S FEDERAL CONSTITUTIONAL RIGHTS HAVE BEEN ABRIDGED BY THE ORDERS OF THE PENNSYLVANIA COURTS REQUIRING YOUR PETITIONER TO BE EXTRADITED TO FLORIDA IN VIOLATION OF HIS RIGHTS OF DUE PROCESS AND SPEEDY TRIAL IN VIEW OF FLORIDA'S WILLFUL FAILURE TO COMPLY WITH THE INTERSTATE AGREEMENT ON DETAINERS ACT.

The Petitioner respectfully submits that the State of Florida has been wrongfully given another opportunity to extradite the Petitioner from Pennsylvania where the record is clear that the State of Florida has willfully failed to comply in the past with the mandatory provisions of the Interstate Agreement on Detainers Act.

This Act, found in Pennsylvania at 42 Pa. C.S. § 9101, provides an Article III(a) that a demanding state has 180 days to respond after a prisoner makes a formal request for final disposition of his charges. In the present case, on September 26, 1994, a formal request for final disposition was submitted on the Petitioner's behalf by himself and by his Florida counsel. Nevertheless, Petitioner's Florida's counsel was advised by the State's Attorney that the State of Florida was determined not to bring the Petitioner back until after he had completed serving all of his outstanding sentences, thereby effectively depriving the Petitioner of the opportunity to gain the benefit of an argument that he was entitled to a concurrent sentence (as he had already received in 1994 from a federal court in Arizona, based upon his substantial assistance to federal authorities).

As a result of Florida's arbitrary and willful refusal to timely pursue the Petitioner's extradition (since 1989), the remedy provided by the Act would be dismissal of the charges. *Carchman v. Nash*, 473 U.S. 716 (1985). In response to this contention, however, the state courts of Pennsylvania have held that under this Court's decision in *New Mexico ex rel. Ortiz v. Reed*, 118 S. Ct. 1860 (1998), the courts of that asylum state could not entertain Petitioner's legal challenges.

Your Petitioner respectfully urges this Honorable Court to grant this Petition for a Writ of Certiorari because this Court's previous ruling in *Reed, supra*, must be construed in such a way as to provide a remedy for persons in the position of this Petitioner whose substantial federal constitutional rights have been unfairly denied by the conduct of the demanding state.

As this Court stated in *Michigan v. Doran*, 439 U.S. 282 (1978), the purpose of the Extradition Clause is to "preclude any state from becoming a sanctuary for fugitives of justice from another state . . .". as well as to prevent any division of the criminal justice system among the states. The Court further stated that the intent of the Clause was to enable each state ". . . to bring offenders to trial as swiftly as possible in the state where the alleged offense was committed". *Id.* at 287. In this Court's decision in *Reed, supra*, this Court refused to allow litigation in the courts of the asylum state concerning the prisoner's claim that he might be subject to abuse in the prison of the demanding state, should he be returned to that state as requested. This Court ruled that issues relating to what had happened in the demanding state, and what could be expected to happen to the fugitive when he returned, should be left for the courts of the demanding state to determine. 118 S. Ct. at 1861.

In the instant case however, your Petitioner has not requested the courts of the asylum state to litigate issues that are open to him to try in the demanding state.[1] Furthermore, the Petitioner has not requested that the Pennsylvania Courts decide any factual issues regarding mitigation of his situation in Florida, but rather has only asked that the provisions of the IAD be enforced in the asylum state's courts.

The Interstate Agreement on Detainers Act is a federal law subject to federal construction. *Cuyler v. Adams*, 449 U.S. 433, 442 (1981). The purpose of the Act is to encourage the expeditious and orderly disposition of outstanding charges, *United States v. Mauro*, 436 U.S. 340, 343 (1978). Surely the provisions of the Act need to be enforced in a case where the demanding state has willfully and capriciously refused to follow the procedures under the Act and has allowed the Petitioner to sit and rot in a Pennsylvania prison until his federal and Pennsylvania sentences are served, before it will comply.

Even under the standards promulgated in *Reed, supra*, extradition would not have been appropriate in this case because the Petitioner is not, in the true sense of the term, a "fugitive" at this time. While it is true that the Petitioner was at one time a "fugitive" in that he failed to appear for sentencing in Florida in 1982, that status ended when he became a person in the custody of the asylum state in 1989. At the very least, it is clear that the Petitioner was no longer a "fugitive" at the time he invoked his request for transfer to Florida under the Interstate Agreement on Detainers Act in 1994.

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1. The Petitioner notes that his request for from relief from the detainer under the IAD has been rejected by the Florida state courts.

As Mr. Justice Stevens stated in his dissenting Opinion in *California v. Superior Court*, 482 U.S. 400, 419 (1987),

> To be a fugitive from justice, it is necessary that having within a state committed that which by its laws constitutes a crime, **when he is sought to be subjected to its criminal process to answer for his offense**, he has left its jurisdiction and is found within the territory of another.

By 1994, the Petitioner was clearly no longer a "fugitive from justice" and Pennsylvania was certainly not "a sanctuary" or "haven" for the Petitioner's refuge from the state of Florida as he had clearly evidenced his willingness to be transferred back to that state to answer to the charges.

Finally, the Petitioner respectfully submits that notwithstanding this Court's decision in *Carchman v. Nash*, *supra*, (holding that the provisions of the Interstate Agreement of Detainers Act do not apply to a detainer arising from a violation of probation), a detainer arising from an open sentencing matter does place the Petitioner within the class of protected individuals under the Act.

Unlike a violation of probation proceeding where the prisoner is not necessarily accused of having committed a criminal offense, the sentencing proceeding is actually part of the "trial" itself so that the Petitioner can fairly argue to the Court that he is still an "untried" prisoner. As this Court recently made clear in *Mitchell v. United States*, 119 S. Ct. 1307 (1999), "to maintain that sentencing proceedings are not part of any criminal case is contrary to the law and common sense". 119 S. Ct. at 1314. Accordingly, this Court

held based upon that reasoning that it would accord the privilege against self incrimination the same protection in a sentencing phase as it would at a trial.

The United States Court of Appeals for the Third Circuit held in *Burkett v. Cunningham*, 826 F.2d 1208 (1987), that a sentencing is part of a trial for the purposes of the right to a speedy trial under the Sixth Amendment. As Chief Judge Becker of the Third Circuit stated, the right to a speedy trial continues until it is determined for how long the accused should be incarcerated.

In *Tinghitella v. California*, 718 F.2d 308 (9th Cir. 1983) and *Hall v. Florida*, 678 F. Supp. 858 (N.D. Fla. 1987), it was held that the Interstate Agreement on Detainers Act does apply to a detainer arising from an open sentencing matter on the ground that the term "trial" does in fact include the sentencing phase of criminal case. In Article IX, it is stated that the Act is to be "liberally construed". In this case, the Act should be construed so that it will be enforced, notwithstanding the Uniform Criminal Extradition Act. Here, the State of Florida has willfully chosen to ignore the requirements of the IAD and has purposely caused your Petitioner to be detained for an extended period of time in the asylum state, thus leaving your Petitioner in a state of great anxiety and uncertainty about the future of his case in that jurisdiction. This is just the sort of uncertainty and anxiety that the Act was intended to prevent.

Accordingly, your Petitioner Robert Bogue respectfully invokes this Court's jurisdiction and prays that the Supreme Court of the United States accept this matter for further review so that his federal constitutional rights to due process of law and to a speedy trial should not be further abridged.

CONCLUSION

Your Petitioner Robert Bogue respectfully requests this Honorable Court to act in the interests of fundamental fairness and justice and grant this Petition.

Respectfully submitted,

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APPENDIX A — MEMORANDUM AND JUDGMENT OF THE SUPERIOR COURT OF PENNSYLVANIA DATED AND FILED DECEMBER 21, 1999

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1375 EDA 1999

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

ROBERT J. BOGUE, A/K/A JACKIE WOOD,

Appellant

Appeal from the Order dated April 26, 1999, in the Court of Common Pleas of Montgomery County, Criminal, at No. 3578-98

BEFORE: DEL SOLE, HUDOCK and BECK, JJ.

MEMORANDUM:

This is an appeal from the order of the Court of Common Pleas of Montgomery County denying Appellant's Petition for a Writ of Habeas Corpus and ordering his extradition to Florida. We affirm.

The relevant facts are not in dispute. On September 23, 1981, Appellant pleaded guilty before the Martin County

Appendix A

Circuit Court in Florida to charges of trafficking in cocaine and using a firearm during the commission of a felony. He failed to appear for sentencing. On June 27, 1989, he was arrested in Montgomery County, Pennsylvania, on charges of possession of marijuana with intent to deliver. On January 14, 1991, the Court of Common Pleas of Montgomery County sentenced him to five and one-half to eleven years' imprisonment.

On September 26, 1994, Appellant submitted formal written notice and requested final disposition of his Florida charges pursuant to Article III of the Interstate Agreement on Detainers (IAD), which is codified in Pennsylvania at 42 Pa.C.S.A. section 9101, and in Florida at section 941.45, Florida Statutes. The State of Florida took the position that it was under no obligation to begin proceedings to sentence Appellant until he completed his Pennsylvania sentence. The request was denied and the Florida Court of Appeals for the Fourth District affirmed, holding that the IAD does not apply to sentencing detainers. ***Bogue v. Fennelly***, 705 So.2d 575 (Fla. App. 1997).

On May 27, 1998, Appellant filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. section 2254 in the United States District Court for the Southern District of Florida. As of the date briefs were filed in this Court, this petition was still pending.

On June 16, 1998, Appellant was arrested as he was being released from custody at the State Correctional Institution at Graterford. The arrest was based upon a bench warrant issued in Florida due to his failure to appear for

sentencing on the 1981 conviction. On June 29, 1998, the Governor of the Commonwealth of Pennsylvania issued a warrant directing the extradition of Appellant. On June 30, 1998, Appellant filed a petition for a writ of habeas corpus in the Montgomery County Court of Common Pleas challenging his extradition. The court denied the petition, and this appeal followed.

Appellant raises two issues on appeal:

> 1. Was the Appellant deprived of the rights of due process of law and speedy trial under the federal and state constitutions where the lower court ordered his extradition notwithstanding the failure of the State of Florida to comply with the the [sic] provisions of the Interstate Agreement on Detainers Act?
>
> 2. Do the provisions of the Interstate Agreement [on] Detainers Act apply to a detainer arising from the Appellant's open sentencing matter in the State of Florida?

In ***New Mexico ex rel. Ortiz v. Reed***, 524 U.S. 151 (1998) (*per curiam*), the United States Supreme Court explained the limits placed on courts considering release on habeas corpus in extradition cases:

> "Once the Governor has granted extradition, a court considering release on habeas corpus can do no more than decide (a) whether the extradition documents on their face are in order; (b) whether

> the petitioner has been charged with a crime in the demanding state; (c) whether the petitioner is the person named in the request for extradition; and (d) whether the petitioner is a fugitive. These are historic facts readily verifiable."

Id. at 152 (quoting ***Michigan v. Doran***, 439 U.S. 282, 289 (1978)). The Court continued:

> In case after case we have held that claims relating to what actually happened in the demanding State, the law of the demanding State, and what may be expected to happen in the demanding State when the fugitive returns, are issues that must be tried in the courts of that State, and not in those of the asylum State.

Id. at 153. Further, "[t]o allow plenary review in the asylum state of issues that can be fully litigated in the charging state would defeat the plain purposes of the summary and mandatory procedures authorized by Art. IV, § 2 [the Extradition Clause of the United States Constitution]." ***Doran***, 439 U.S. at 290.

At the hearing on Appellant's petition, Appellant's counsel stipulated that requirements (a) through (c) were satisfied. We need only consider whether Appellant was a fugitive.

"[I]t is well-settled that a person is a 'fugitive from justice' if he was present in the charging state when the offense was committed and thereafter leaves the charging

state, regardless of the reasons or motives for the exodus." ***Commonwealth v. Ferrari***, 545 A.2d 1372, 1375 (Pa. Super. 1988) (emphasis deleted). Appellant's guilty plea to the Florida charges establishes conclusively that he was in Florida at the time the offense was committed, so the final ***Doran*** requirement is satisfied and Appellant must be extradited to Florida. Both of Appellant's issues must be litigated there.

Order affirmed.

Appendix A

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1375 EDA 1999

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

ROBERT J. BOGUE, A/K/A JACKIE WOOD,

Appellant

Appeal from the Order dated April 26, 1999, in the Court of Common Pleas of Montgomery County, Criminal, at No. 3578-98

BEFORE: DEL SOLE, HUDOCK and BECK, JJ.

JUDGMENT

ON CONSIDERATION WHEREOF*, it is now here ordered and adjudged by this Court that the judgment of the Court of Common Pleas of* Montgomery *County be, and the same is hereby* AFFIRMED.

BY THE COURT:

s/ [illegible]
PROTHONOTARY

Dated: December 21, 1999

APPENDIX B — OPINION OF THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA, CRIMINAL DIVISION DATED APRIL 26, 1996

IN THE COURT OF COMMON PLEAS OF
MONTGOMERY COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

NO. 03627-89

COMMONWEALTH OF PENNSYLVANIA

VS.

JACKIE L. WOOD, a/k/a ROBERT JAMES BOGUE

OPINION

CORSO, J. **APRIL 26, 1996**

On August 23, 1995 a hearing was scheduled on "Defendant's Petition to Dismiss and Discharge with Prejudice" the detainer filed against him by the State of Florida. Following a conference with counsel, and a tentative agreement, a proposed Order was submitted to the Court by counsel for defendant. The Order was signed by the Court on August 23, 1995, dismissing the Florida detainer without prejudice to the State of Florida's right to lodge another detainer at a future date. On September 29, 1995, the Defendant filed a Notice of Appeal thus necessitating this Opinion.[1]

---

1. Due to a breakdown in the Clerk of Court's office this appeal was time stamped upon receipt but not docketed or forwarded to the undersigned until February 26, 1996. However, there is no evidence before this Court of any breakdown in operation that in any way affected the actual filing of Defendant's Notice of Appeal.

Appendix B

The appeal is frivolous and should be dismissed because it is from an agreed order prepared by the defendant's attorney, the appeal is not timely, it is not an appealable order, and there is no prejudice to the defendant.

Initially, it must be noted that a layperson choosing to represent themself in a legal proceeding assumes the risk that their lack of legal knowledge and training will defeat their case. *Smathers v. Smathers*, __ Pa. Super. __, 670 A.2d 1159 (1996); *O'Neill v. Checker Motors Corp.*, 389 Pa. Super. 430, 567 A.2d 680 (1989). While a Court may liberally construe a pro se party's arguments, it is clear that the Defendant is not entitled to any advantage in the prosecution of an appeal due to lack of legal knowledge and training. *Id.*

The Defendant failed to file a timely appeal of this Court's August 23, 1995 Order. Pennsylvania Rule of Appellate Procedure 903[2] specifically mandates that the party seeking to appeal must file a notice of said appeal within thirty days after the entry of the order from which the appeal is taken. Defendant's notice of appeal was not filed with this Court until after the expiration of this deadline.

> The timeliness of an appeal is jurisdictional, and the issue of timeliness may be raised, even sua sponte, at any stage of the proceedings. An untimely appeal must be quashed absent a showing of fraud or a breakdown in the court's operation.

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2. 42 Pa. R.A.P. 903.

Appendix B

Thorn v. Newman, 113 Pa. Commw. 642, 647, 538 A.2d 105, 107 (1988). There is no evidence that any fraud or breakdown in court operation was responsible for Defendant missing the deadline for filing a timely appeal. Defendant's appeal is facially defective and should be quashed.

Rule §341 of the Rules of Appellate Procedure provides that "[A]n appeal may be taken as of right from any final order of an administrative agency or lower court." Section (b) of the Rule defines a final order as one that (1) disposes of all claims or of all parties, (2) is expressly defined as a final order by statute, or (3) is entered as a final order pursuant to subsection (c) of this Rule.

The August 23, 1995, Order at issue is not a final order under Rule 341. In *West v. Anderson*, 626 A.2d 606, 426 Pa. Super. 127 (1993), the Superior Court stated:

> An appeal will lie only from a final order unless otherwise permitted by statute. A final order is one which ends the litigation or, alternatively, disposes of the entire case. . . . Conversely, an order is interlocutory and not final unless it effectively puts the litigant out of court.

Id. at 607, 129 quoting *Praisner v. Stocker*, 459 A.2d 1255, 313 Pa. Super. 332 (1983).

> Where an order has the practical effect of precluding the party from further litigation of the claim, it is considered final for purposes of appellate review.

Appendix B

Commonwealth v. Romolini, 384 Pa. Super. 117, 557 A.2d 1073 (1989).

The August 23, 1995, Order does not put the Defendant out of Court or preclude him from further litigation of his claims. In fact the Order not only granted the relief sought by the Defendant, but was entered pursuant to an agreement between the Commonwealth and the Defendant. If the State of Florida elects to pursue a new detainer, the substantive defenses that were available to him will still be available. There is no prejudice to the defendant.

The Order granting the Defendant's petition without prejudice to Florida's right to refile a new detainer at a future time is neither defined by statute as a final order nor is it a final order under 42 Fla. R.A.P. 341(c).

In essence, the Defendant is attempting to appeal a non-appealable interlocutory order, which was prepared and presented to the Court by counsel for defendant as an agreement, after the statutory appeal period had expired. The appeal should be quashed.

BY THE COURT:

s/ S. Gerald Corso
S. GERALD CORSO, J.

APPENDIX C — PER CURIAM ORDER OF THE SUPREME COURT OF PENNSYLVANIA FOR THE MIDDLE DISTRICT DENYING PETITION FOR ALLOWANCE OF APPEAL DATED JUNE 26, 2000

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

No. 0042 M.D. Alloc. Dkt. 2000

Petition for Allowance of Appeal from the
Order of the Superior Court

COMMONWEALTH OF PENNSYLVANIA,

Respondent

v.

ROBERT J. BOGUE A/K/A JACKIE WOOD,

Petitioner

ORDER

PER CURIAM:

AND NOW, this 26th day of June, 2000, the Petition for Allowance of Appeal is hereby **DENIED.**